

REMARKS

The Office Action mailed August 21, 2006 considered claims 1-40. Claims 1-5, 7-11, 13-26, 28-32, 34-39 U.S.C. 103(a) as being unpatentable over Steinberg et al. (US 6,966,015) hereinafter *Steinberg*. Claims 6, 12, 27, 33, 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Steinberg* in view of Peebles et al. (US 2003/0204789) hereinafter *Peebles*.¹

By this amendment claims 1, 9, 10 and 36 have been amended, claims 41-43 have been added and claims 37-40 have been cancelled.² Claims 1, 9, 10, 36, and 43 are the only independent claims at issue.

The present invention is generally directed to building a health model of software components. For example, claim 1 describes an instrumentation collector for receiving information specifying instrumentation of software components. Next, claim defines a health model generator for creating a health model using the information about the instrumentation of the software components. Lastly, claim 1 defines an instrumentation analyzer for grouping instrumentation that result in the same transition from one state of the health model to another state of the health model, the instrumentation analyzer grouping mapped instrumentation into groups that have the same state of operation before the instrumentation is generated and the same state of operation after the instrumentation was generated.

New claim 43 is a method claim generally directed to notifying a computer user when a software component transitions from one state of a health model to another state of the health model. For example, claim 43 defines an act of instrumentation monitoring a software component to detect when a change of the state of operation occurs such that the operation is no longer running. Next, claim 43 defines upon detecting a state transition that results in the software component no longer functioning as intended, an act of the instrumentation notifying the computer system with an alert, the alert indicating that the software component is no longer functioning as intended. Lastly, claim 43 defines upon subsequently detecting a state transition that results in the software component again functioning as intended, an act of the instrumentation notifying the computer system with an anti-alert, the anti-alert indicating that the software component is again functioning as intended.

Claim 10 is a method claim similar to claim 1. Claims 9 is a computer program product claim corresponding to claim 1. Claim 36 is computer program product claim corresponding to claim 10.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the amendments to the claims and for the new claims are found throughout the specification and previously presented claims, including but not limited to paragraphs [0036], [0037], [0041], [0042] and Figures 3, 5 and 7.

Applicants respectfully submit that the cited art of record does not anticipate or otherwise render the amended claims unpatentable for at least the reason that the cited art does not disclose, suggest, or enable each and every element of these claims.

Steinberg describes a method and system for reducing false alarms in network fault management systems. *Steinberg* describes a method for improving the accuracy of fault detection software by reducing false alarms using different variables, indicators and rules (col. 2:30-45). Event data is received and scanned for any correlations. If certain indicators rise or fall or if certain groups of indicators show a fault or no fault, the system reports the findings (col. 3:1-20). The system can monitor logical groupings of indicators in which the components are expected to move together but the groups themselves are not expected to necessarily move together (col. 10:36-40, claim 10). The use of grouping also supports various logical operations among members of a group (col. 11:2-5).

Peebles describes a method and apparatus for generating diagnostic recommendations for enhancing process performance. *Peebles* describes a system for monitoring processes and generating reports based on the process monitoring which reflect the overall health of the system (see abstract).

Steinberg and *Peebles* fail, however, to teach or suggest an instrumentation analyzer for grouping instrumentation that result in the same transition from one state of the health model to another state of the health model, the instrumentation analyzer grouping mapped instrumentation into groups that have the same state of operation before the instrumentation is generated and the same state of operation after the instrumentation was generated, as recited in claim 1. For at least this reason, claims 1 and 9 patentably define over the art of record. For at least the same reason, claims 10 and 36 also patentably define over the art of record. Furthermore, *Steinberg* and *Peebles* fail to teach or suggest upon subsequently detecting a state transition that results in the software component again functioning as intended, an act of the instrumentation notifying the computer system with an anti-alert, the anti-alert indicating that the software component is again functioning as intended, as recited in claim 43. For at least this reason, claim 43 patentably defines over the art of record.

Claims 1-9 and 36-40 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 was amended to more clearly distinguish the use of hardware in the claim. Furthermore, claims 9 and 36 have been amended to recite "a computer storage medium." The rejections of claims 37-40 are rendered moot by the cancellation of claims 37-40.

In view of the foregoing, Applicants respectfully submit that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official

notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 21st day of November, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.D. Nydegger", written in a cursive style.

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